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IFW
RESPONSE UNDER 37 C.F.R. § 1.116
EXPEDITED PROCEDURE
EXAMINING GROUP 3731

THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: T. Anthony D. [REDACTED]
Application No.: 10/005,699 Conf. No. 7636
Filed: December 7, 2001
For: DISTAL PROTECTION DOUBLE BALLOON CATHETER

Art Unit: 3731
Examiner: U.T. Ho
Washington, D.C.
Atty.'s Docket: DON MICHAEL=27
Date: August 16, 2005

THE COMMISSIONER OF PATENTS
Customer Service Window
Randolph Building, Mail Stop AF
401 Dulany Street
Alexandria, VA 22314

Sir:

Transmitted herewith is a ☐ Amendment ☐ _____
in the above-identified application.

- ☒ Small Entity Status: Applicant(s) claim small entity status. See 37 C.F.R. §1.27.
☐ No additional fee is required.
☐ The fee has been calculated as shown below:

	(Col. 1)		(Col. 2)	(Col. 3)
	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NO. PREVIOUSLY PAID FOR	PRESENT EXTRA EQUALS
TOTAL	* 9	MINUS	** 20	0
INDEP.	* 1	MINUS	*** 3	0
FIRST PRESENTATION OF MULTIPLE DEP. CLAIM				

SMALL ENTITY		OR	OTHER THAN SMALL ENTITY	
RATE	ADDITIONAL FEE		RATE	ADDITIONAL FEE
x 25	\$		x 50	\$
x 100	\$		x 200	\$
+ 180	\$		+ 360	\$
ADDITIONAL FEE TOTAL		OR	TOTAL	
\$			\$	

- * If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3.
** If the "Highest Number Previously Paid for" IN THIS SPACE is less than 20, write "20" in this space.
*** If the "Highest Number Previously Paid for" IN THIS SPACE is less than 3, write "3" in this space.

The "Highest Number Previously Paid For" (total or independent) is the highest number found from the equivalent box in Col. 1 of a prior amendment of the number of claims originally filed.

- ☒ Conditional Petition for Extension of Time
If any extension of time for a response is required, applicant requests that this be considered a petition therefor.

- ☒ It is hereby petitioned for an extension of time in accordance with 37 CFR 1.136(a). The appropriate fee required by 37 CFR 1.17 is calculated as shown below:

Small Entity
Response Filed Within
[] First - \$ 60.00
[XX] Second - \$ 225.00
[] Third - \$ 510.00
[] Fourth - \$ 795.00
Month After Time Period Set

Other Than Small Entity
Response Filed Within
[] First - \$ 120.00
[] Second - \$ 450.00
[] Third - \$ 1020.00
[] Fourth - \$ 1590.00
Month After Time Period Set

- ☒ Less fees (\$60.00) already paid for one- month extension of time on July 20, 2005.

- [] Please charge my Deposit Account No. 02-4035 in the amount of \$ _____.

- ☒ Credit Card Payment Form, PTO-2038, is attached, authorizing payment in the amount of \$165.00.

- [] A check in the amount of \$ _____ is attached (check no.).

- ☒ The Commissioner is hereby authorized and requested to charge any additional fees which may be required in connection with this application or credit any overpayment to Deposit Account No. 02-4035. This authorization and request is not limited to payment of all fees associated with this communication, including any Extension of Time fee, not covered by check or specific authorization, but is also intended to include all fees for the presentation of extra claims under 37 CFR §1.16 and all patent processing fees under 37 CFR §1.17 throughout the prosecution of the case. This blanket authorization does not include patent issue fees under 37 CFR §1.18.

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BROWDY AND NEIMARK, P.L.L.C.

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Registration No. 21,082



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ATTY.'S DOCKET: DON MICHAEL=27

In re Application of:)	Art Unit: 3731
)	
T. Anthony DON MICHAEL)	Examiner: Uyen T. Ho
)	
Appln. No.: 10/005,699)	Washington, D.C.
)	
Filed: December 7, 2001)	Confirmation No. 7636
)	
For: DISTAL PROTECTION DOUBLE)	August 16, 2005
BALLOON CATHETER)	

RESPONSE TO ADVISORY ACTION

Customer Service Window, Mail Stop AF
Honorable Commissioner for Patents
U.S. Patent and Trademark Office
Randolph Building
401 Dulany Street
Alexandria, Virginia 22314

Sir:

This is in response to the Advisory Action dated
August 8, 2005.

In the Amendment filed July 20, 2005, claim 1 was
amended to include the subject matter originally presented in
claim 2, or, in other words, claim 2 was placed in independent
form.

The amendments to claim 1 include the recitation of
"a tube dimensioned to surround ... said catheter". In the
Advisory Action, the examiner asserts that the rejection
previously applied to claim 2 was appropriate because the

reference discloses, at column 4, lines 14-28, a guiding catheter (not shown) into which a syringe 44 is inserted, the syringe being used only to suction particles from the treatment region in the blood vessel.

It is submitted that the disclosure of a guiding catheter for the syringe cannot properly be considered to constitute a disclosure of "a tube dimensioned to surround ... said catheter (which carries two balloons)".

In the reference, the catheter carrying two balloons is the catheter 12. As shown particularly in Fig. 2 of this reference, and described in columns 3 and 4 of the reference specification, catheter 12 has at least three longitudinal lumens: balloon lumens 24 and 34 and a third lumen, or channel, 46 for blood perfusion. Syringe 44 would contain only a single lumen for suction purposes.

It is well understood by anyone skilled in the art that a catheter with three lumens, and particularly when one of those is for blood perfusion, must necessarily have a substantially larger diameter than a catheter, or syringe, containing a single lumen. In other words, those skilled in the art would understand the reference to disclose that the catheter carrying two balloons will have a substantially larger diameter than the suction syringe. This means, in turn, that there is no basis for concluding that the reference

disclosure of a guiding catheter that can receive syringe 44 would be large enough to surround catheter 12.

Moreover, since it is standard practice to make all catheters, including guiding catheters, that are to be inserted into a blood vessel as small as possible, one skilled in the art would have no practical reason, based on the disclosure in the applied reference, to employ a guiding catheter for syringe 44 that is sufficiently large to fit around catheter 12 and one or both balloons carried thereby, even if those balloons were deflated.

The rejection of amended claim 1 appears to be based essentially on the erroneous view that the dimensions shown in the patent drawings can be relied upon. It is submitted that this is not appropriate. The examiner's attention is drawn to MPEP, Section 2125 which states, *inter alia*, that it "is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue".

In addition, amended claim 1 defines "a suction source communicating with the interior said tube". In connection with this issue, the examiner is of the opinion that since syringe 44 produces suction, and since the guiding catheter is possibly somewhere in the neighborhood of syringe

44 (although this is also not disclosed in the reference), then the suction being produced by syringe 44 "communicates" with the interior of the tube. Of course, according to the reference disclosure, the suction produced by syringe 44 is only intended to act on particles that are downstream of the syringe, at some distance from an unillustrated guiding catheter.

Moreover, according to the disclosure in the present application, the suction source is external to the patient's body and is connected to produce suction through tube 14. This is quite different from any suction system that can be inferred from the disclosure of the applied reference. When reconsidering the rejection, the examiner is asked to consider whether the distinctions between the invention and the prior art could be more clearly defined by a further amendment to claim 1 to specify that the suction source is connected to apply suction through the tube.

• Appln. No. 10/005,699
• Amd. dated August 16, 2005
• Reply to Advisory Action of August 8, 2005

In view of the above, it is submitted that the present rejection of claim 1 is unjustified and it is therefore requested that the conclusion reached in the Advisory be reconsidered and withdrawn and that appropriate further action be taken.

Respectfully submitted,
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